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CLEARINGHOUSE RULE 98-007

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Section Comm 110.04 restricts the use of grant proceeds to certain “assessment services.” This is substantially more restrictive than s. 560.13 (2) (a) 1., Stats., which authorizes the use of grant proceeds for “brownfields redevelopment or associated environmental remediation activities.” Given the detail in s. Comm 110.08 regarding the activities to be described in a grant application, it appears that the intent of s. Comm 110.04 merely is to prohibit the use of grant proceeds for the completion of Phase 1 and Phase 2 environmental assessments. If that is the intent of the rule, s. Comm 110.04 should be redrafted. Also, it is unclear what is meant by “assessment services.”

2. Form, Style and Placement in Administrative Code

a. In the second paragraph of the analysis, the notation “Comm” should be inserted before the number “110.”

b. In s. Comm 110.02 (5), the first word in each paragraph should begin with a capital letter. [See, also, s. Comm 110.08 (10).]

c. In s. Comm 110.02 (10), the first period should be deleted.

d. “Department,” as used in s. Comm 110.03 (1) and (4), should not be capitalized.

e. The phrase “but not limited to” in s. Comm 110.03 (1) and (4) is unnecessary.

f. The lettered paragraphs in s. Comm 110.07 should be changed to numbered subsections.

g. It appears that the second sentence in s. Comm 110.08 (6) is intended to be a separate subsection.

h. The programs listed in s. Comm 110.08 (10) (b) should not be capitalized. Also, the phrase “Agri-Chemical” is not the correct name of the state program that the department intends to describe.

i. As a general comment, the sections of the rule are not in the proper order. It is good drafting practice in grant programs to draft the rule in the chronological order of the grant process. The following order is suggested for the rule:

- Application; s. Comm 110.08.
- Conditions for approval; ss. Comm 110.03 and 110.07.
- Contracts; s. Comm 110.05.
- Use of grant funds; s. Comm 110.04.
- Reports and audits; s. Comm 110.06.

4. Adequacy of References to Related Statutes, Rules and Forms

a. All statutory cross-references should use “s.” rather than “section.”

b. References at several places in the rule to “this subchapter” should be changed to “this chapter.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the second paragraph of the analysis, it appears that the first sentence is incomplete.

b. Section Comm 110.01 describes the purposes for the new brownfields grant program rules. These purposes include “prescribing the amounts of grants that may be awarded.” In fact, the rule does not prescribe the amounts of grants that may be awarded. Also, the word “their” should be replaced by the word “the.”

c. The term “in-kind contribution” is defined as certain “actual remediation services.” A list of examples follows and it is unclear why it is necessary to repeat “operating remediation services” in the list.

d. The definition of “project” refers to certain activities “undertaken on a site.” Most other provisions of the rule refer to “facilities or sites” or “brownfields facilities or sites.” It is not clear why “site” is used in this definition.

e. The title of s. Comm 110.03 is “GRANT PROCESS.” The contents of that section relate to criteria for grant approval rather than a “grant process.” Also, the introductory paragraph requires the department to consider the listed criteria “before awarding” a grant. If these criteria are conditions for approval of a grant, that should be explicitly stated. Many provisions within these criteria are unclear, including the following:

- What is “distress”?
- Does local and private investment relate only to the brownfields facility or site or to the surrounding area?
- Does the “increase in taxable property” relate to an increase in the value of taxable property?
- How does the “recipient’s contribution to the project” relate to the requirement for a recipient match? Is this the same or different?
- Are “activities undertaken by or at the direction of the recipient” the same as in-kind contributions?
- What is meant by “public/private partnership”? Also, slashed alternatives should be avoided.

f. The phrase “successful applicant” in ss. Comm 110.05 and 110.06 should be replaced by a more conventional term, such as “grant recipient.”

g. Section Comm 110.05 refers to a “proposed” grant. It appears that, at this stage in the process, the grant has been approved.

h. In the second sentence of s. Comm 110.06, the word “report” should be replaced by the word “reports.”

i. Section Comm 110.07 uses the phrase “grant an award.” The phrase “award a grant” would be consistent with the statute and the other portions of the rule.

j. In s. Comm 110.07 (a), the phrase “recipient uses” should be replaced by the phrase “recipient will use,” since, at this point in the process, a grant has not been made. Similarly, par. (c) should be rewritten to state that the recipient will contribute a recipient match. The term “recipient match” should be used since it is a defined term.

k. Section Comm 110.08 (intro.) refers to “eligible applicants.” However, this portion of the rule refers to the application process and the eligibility of the applicant has presumably not yet been determined.

l. It is not clear why the qualifications of a person in s. Comm 110.08 (2) (d) are related only to the provision of in-kind services. Should the rule impose requirements for qualifications on persons providing services financed with grant funds?

m. “Seking” is misspelled in s. Comm 110.08 (6).

n. In s. Comm 110.08 (10), if each paragraph does not end with a period, then each paragraph, except for the last paragraph, should make use of a semicolon.